

Frank J. Rubino
Corporation Counsel for the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
914-377-6256
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSEPH SRIKISHUN,

Plaintiff,

AMENDED ANSWER

-against-

Index No.: 08 CV 0998 (CLB)

THE CITY OF YONKERS, P.O. RALPH
CAROZZA, P.O. ARTHUR LIEN, P.O. RONALD
ROMANO, P.O. JASON LAYUG, P.O. BRUCE
GROSSMAN, P.O. JOHN TRAYNOR, and
P.O.'s JOHN and JANE DOE # 1-10, individually
And in their official capacities, (the names John and
Jane Doe being fictitious, as the true names are
presently unknown),

Defendants.

-----X

Defendants, THE CITY OF YONKERS, P.O. RALPH CAROZZA, P.O.
ARTHUR LIEN, P.O. RONALD ROMANO, P.O. JASON LAYUG, P.O. BRUCE
GROSSMAN, P.O. JOHN TRAYNOR, by their attorney, Frank J. Rubino, Corporation
Counsel of the City of Yonkers, as and for their Amended Answer to the Amended
Complaint respectfully allege as follows:

FIRST: Deny the allegations set forth in paragraphs "1", "2", "3", "4" and "5" of
the Amended Complaint; except those portions containing conclusions of law which

accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “6”, “13”, “14”, “15”, “17” and “18” of the Amended Complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “8” of the Amended Complaint except admit that the City of Yonkers has a Police Department and respectfully refers all questions of law to the Court.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “9”, “10”, “11” and “12” of the Amended Complaint and respectfully refers all questions of law to the Court.

FIFTH: Denies upon information and belief, each and every allegation set forth in paragraph designated “19” of the Amended Complaint.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “16” and “20” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIRST CLAIM FOR RELIEF

SEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “21” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “22” of the Amended Complaint and respectfully refers all questions of law to the Court.

NINTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “23”, “24”, “25” and “26” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SECOND CLAIM FOR RELIEF

TENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “27” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

ELEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “28” and “29” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE THIRD CLAIM FOR RELIEF

TWELFTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “30” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

THIRTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “31”, “32” and “33” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FOURTH CLAIM FOR RELIEF

FOURTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “34” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

FIFTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “35”, “36”, “37”, “38”, “39”, “40”, “41”, “42”, “43”, “44A”, “44B”, “44C” and “45” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE PENDANT STATE CLAIMS

SIXTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “46” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “47” of the Amended Complaint except admit that a paper writing purporting to be a notice of claim was received in the Yonkers Corporation Counsel’s Office and respectfully refers all questions of law to the Court.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “50”, “51” and “52” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIRST CLAIM FOR RELIEF UNDER N.Y. STATE LAW

NINETEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “53” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWENTIETH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “54” and “55” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SECOND CLAIM FOR RELIEF UNDER N.Y. STATE LAW

TWENTY-FIRST: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “56” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-SECOND: Denies upon information and belief, each and every allegation set forth in paragraphs designated “57”, “58” and “59” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE THIRD CLAIM FOR RELIEF UNDER N.Y. STATE LAW

TWENTY-THIRD: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “60” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FOURTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “61” and “62” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FOURTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW

TWENTY-FIFTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “63” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “64”, “65”, “66”, “67” and “68” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIFTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW

TWENTY-SEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “69” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-EIGHTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “70” and “71” of the Amended Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SIXTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW

TWENTY-NINTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph

designated “72” of the Amended Complaint with the same force and effect as though fully set forth herein at length.

THIRTIETH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “73” and “74” of the Amended Complaint and respectfully refers all questions of law to the Court.

THIRTY-FIRST: Deny all allegations in the “Wherefore” portion of the Amended Complaint, except those conclusions of law which accordingly require no response; and except admit that plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE:

THIRTY-SECOND: The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE:

THIRTY-THIRD: Defendants’ actions were in good faith and good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

AS AND FOR A THIRD DEFENSE:

THIRTY-FOURTH: Injuries and damages to the Plaintiff were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of Plaintiff.

AS AND FOR A FOURTH DEFENSE:

THIRTY-FIFTH: At all times relevant to the Complaint, Defendants have been in compliance with all requirements under the laws cited by the Complaint.

AS AND FOR A FIFTH DEFENSE:

THIRTY-SIXTH: That if any physical force was used to effect the arrest of the Plaintiff, only such physical force was used to the extent it was reasonably believed to be necessary to effect the arrest of the plaintiff, whom the arresting officer reasonably believed to have committed an offense.

AS AND FOR A SIXTH DEFENSE:

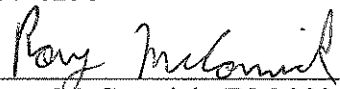
THIRTY-SEVENTH: That the plaintiff's arrest and prosecution were not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the Plaintiff guilty of a criminal act and in arresting and prosecuting the Plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A SEVENTH DEFENSE:

THIRTY-EIGHTH: The individual defendants are entitled to the defense of qualified immunity.

Dated: July 8, 2008
Yonkers, New York

Frank J. Rubino
Corporation Counsel for the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
914-377-6256


By: Rory McCormick (RM 3994)
Associate Corporation Counsel

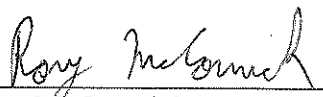
TO: Rose M. Weber
225 Broadway, Suite 1607
New York, New York 10007

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2008 I caused a true and correct copy of the foregoing AMENDED ANSWER to be served by mail upon:

Rose M. Weber
225 Broadway, Suite 1607
New York, New York 10007

Dated: July 8, 2008
Yonkers, New York



Rory McCormick